

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

KHBAIR AM-JAID TISDALE,)	CASE NO. 4:07 CV 2926
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
MICHELE EBERLIN,)	<u>AND ORDER</u>
)	
Respondent.)	

On September 25, 2007, petitioner pro se Khbair Am-Jaid Tisdale filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Mr. Tisdale is incarcerated in an Ohio penal institution, having been convicted of possession of drugs. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

The thrust of Mr. Tisdale's action is that he was convicted in violation of Ohio's speedy trial statute. Even assuming he has preserved a federal constitutional issue, however,

it is evident on the face of the petition that he has yet to appeal his conviction. Thus, at the very least, he may still pursue a delayed appeal under Ohio Appellate Rule 5.¹

Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, this action is dismissed without prejudice for failure to exhaust state court remedies. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability, Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.



DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE

¹ This court expresses no opinion concerning whether: 1) some or all of petitioner's claims are cognizable; 2) he may be found to have procedurally defaulted on said claims once he exhausts the state remedies available to him; or 3) the statute of limitations for filing a federal habeas action has expired.